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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/882,485	06/15/2001	Jay H. Connelly	042390P11866	8135

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EXAMINER

VAN HANDEL, MICHAEL P

ART UNIT	PAPER NUMBER
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2623

MAIL DATE	DELIVERY MODE
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06/05/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/882,485

Applicant(s)

CONNELLY, JAY H.

Examiner

Michael Van Handel

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 March 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 81, 82, 84, 87, 88, 90-93, 95-97 and 99-102 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 81, 82, 84, 87, 88, 90-93, 95-97, 99-102 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3/02/2007 has been entered.

Response to Amendment

1. This action is responsive to an Amendment filed 3/02/2007. Claims 1, 81, 82, 84, 87, 88, 90-93, 95-97, 99-102 are pending. Claims 1, 81, 82, 84, 87, 88, 90-93, 95, 99 are amended. Claims 2-80, 83, 85, 86, 89, 94, 98, 103 are canceled.

Response to Arguments

1. Applicant's arguments regarding claims 1, 91, 95, and 99, filed 3/02/2007, have been fully considered, but they are not persuasive.

Regarding claims 1, 91, 95, and 99, the applicant argues that Payton does not filter the prioritized content based on the user interests being performed at the client or refining the prioritized content into demanded content based on the demand table and broadcasting the demanded content to the client. The examiner respectfully disagrees. As noted in the Office Action mailed 3/02/2007, Payton discloses a digital information system for delivering virtual on-

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demand information over digital transport systems by offloading a portion of the systems' peak bandwidth requirements to the local subscribers. A local collaborative filtering system synthesizes the preferences of all of the subscribers and then predicts those items that each subscriber might like, and therefore request. Each subscriber is provided with a local storage device for storing, during off-peak hours, those items recommended by the collaborative filtering system (see Abstract).

Payton discloses a central distribution server 24 that includes a digital repository 34 for storing digital items 36 (col. 4, l. 55-57). A digital transport system 26 broadcasts the digital items 36 from the central distribution server 24 to a local server 28 (col. 5, l. 55-57). This meets the limitation of "broadcasting first content descriptors to a client, the first content descriptors describing the content for broadcast," as currently claimed. Each of the system's subscribers has an associated subscriber profile 40 for predicting the items a subscriber will watch based on the subscriber's interests (col. 5, l. 6-7). The local server monitors the viewing habits of the subscriber to augment the subscriber profile to improve prediction (col. 6, l. 44-50 & col. 8, l. 37-43). The subscriber profile 40 is eventually sent from the subscriber to the central distribution server 24 over a back channel 30 (col. 6, l. 51-53). A collaborative filtering system 42 at the central distribution server 24 synthesizes the subscriber profiles 40, predicts which of the available items 36 each subscriber may be interested in or may request, and produces a list of recommended items for each subscriber (col. 5, l. 12-16). The examiner notes that the list of recommended items may include previously viewed items that a subscriber rated very highly, and is thus likely to request again (col. 5, l. 19-21). A scheduling processor 46 merges the lists 44 of recommended items to prioritize the items 36 from the most to the least frequently

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recommended and places identifiers for these items in a refresh queue 47 for broadcast over the digital transport system 26 (col. 5, l. 21-26). This meets the limitation of “prioritizing the content in response to a feedback received from the client, wherein the feedback is automatically generated transparent to the client based on an amount of content consumed by the client,” as currently claimed. When the recommended items reach the top of the refresh queue 47, they are retrieved from repository 34 and are broadcast to the local users (col. 5, l. 26-28). This meets the limitation of “broadcasting second content descriptors, the second content descriptors describing the prioritized content for broadcast,” as currently claimed.

Additionally, Payton discloses prompting the subscriber to enter a rating, such as a number on a scale from 1 to 10, after using a requested item (col. 6, l. 36-39). The ratings are stored in a rating vector in the subscriber profile (col. 5, l. 7-10; col. 8, l. 50-56; & Fig. 6). The updated profile 40 is transmitted from the subscriber back to the central distribution server 24 (col. 6, l. 51-53). This meets the limitation of “receiving a demand table having rankings of the prioritized content based on user interests, the demand table is created and updated at the client in response to filtering of the prioritized content based on the user interests being performed at the client,” as currently claimed. The examiner notes that the rating vector is a part of the subscriber profile, and as such, is used with the monitored viewing habits of the profile to determine the list of recommended items 44 for the subscriber. Since the scheduling processor 46 merges the lists 44 of recommended items to prioritize and broadcast the items, as mentioned above, this meets the limitation of “refining the prioritized content into demanded content based on the demand table; and broadcasting the demanded content to the client,” as currently claimed.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim **84** is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Specifically referring to claim **84**, the examiner notes that the claim is dependent on canceled claim 83. The examiner recommends that the claim be amended to depend on claim 1. The examiner interprets the claim in the Office Action below as though the recommended changes have been made.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims **1, 81, 84, 87, 88, 90-92, 95, 96, 99-101** are rejected under 35 U.S.C. 102(b) as being anticipated by Payton.

Referring to claims **1, 88, 91, 95, 99, and 100**, Payton discloses a method/machine-readable medium/system/apparatus, comprising:

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- broadcasting first content descriptors to a client, the first content descriptors describing the content for broadcast (col. 3, l. 2-15; col. 5, l. 55-57; & col. 6, l. 1-9, 29-31);
- prioritizing the content in response to a feedback received from the client (col. 3, l. 13-14 & col. 5, l. 22-31, 55-57), wherein the feedback is automatically generated transparent to the client based on an amount of content consumed by the client (col. 6, l. 44-50 & col. 8, l. 38-43);
- broadcasting second content descriptors, the second content descriptors describing the prioritized content for broadcast and broadcasting the prioritized content to the client (col. 3, l. 12-17; col. 6, l. 67; col. 7, l. 1-7, 61-65; & col. 8, l. 11-13);
- receiving a demand table having rankings of the prioritized content based on user interests, the demand table is created and updated at the client in response to filtering of the prioritized content based on the user interests being performed at the client (col. 5, l. 6-10; col. 6, l. 36-40, 51-53; col. 8, l. 50-56; & Fig. 6);
- refining the prioritized content into demanded content based on the demand table (col. 5, l. 19-21); and
- broadcasting the demanded content to the client (col. 5, l. 22-28).

Referring to claims **81, 92, 96, and 101**, Payton discloses the method/machine-readable medium/system/apparatus of claims 1, 91, 96, and 99, respectively, wherein the feedback received from the client is received in a batch (the examiner notes that by sending the subscriber profile data in response to a periodic trigger, the data is sent in a batch)(col. 7, l. 65-67 & col. 8, l. 1-4).

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Referring to claim **90**, Payton discloses the method of claim 1, further comprising updating a descriptor table at the client in accordance with the first and second content descriptors (col. 3, l. 15-17; col. 6, l. 67; & col. 7, l. 1-3, 61-65).

Referring to claim **84**, Payton discloses the method of claim 1, further comprising selectively storing content in accordance with the table (col. 8, l. 26-49).

Referring to claim **87**, Payton discloses the method of claim 1, wherein the content first and second content descriptors include metadata to describe one or more of the content, the prioritized content, and the demanded content (the examiner notes that data describing the transmitted items is necessary and inherent to Payton, in order to allow a subscriber interface 58 to display the list of recommended items)(col. 6, l. 7-9, 26-29, 67 & col. 7, l. 1-3).

NOTE: The USPTO considers the applicant's "one or more of" language to be anticipated by any reference containing any of the subsequent corresponding elements.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims **82, 93, 97, 102** are rejected under 35 U.S.C. 103(a) as being unpatentable over Payton.

Referring to claims 82, 93, 97, and 102, Payton discloses the method/machine-readable medium/system/apparatus of claims 1, 91, 97, and 99, respectively. Payton further discloses that subscriber profiles are communicated between the central distribution server and the subscribers over a low bandwidth back channel (col. 3, l. 2-6 & col. 6, l. 51-58). Payton still further discloses that the local server 28 sends new subscriber profile data in response to a periodic trigger (col. 7, l. 65-67 & col. 8, l. 1-4). Payton does not disclose staggering the sending of feedback to a server by client, wherein the staggering is based on a last time the client sent feedback to the server. Applicant's failure to adequately traverse the Examiner's taking of Official Notice (that it is well known within the prior art to stagger the sending of information across a network to minimize network congestion) in the last Office Action is taken as an admission of the fact(s) noticed. It would have been obvious to one of ordinary skill in the art at the time that the invention was made to modify Payton's method of periodically sending subscriber profile data across a low bandwidth back channel to include staggering the sending of information, such as that taught by the prior art in order to minimize network congestion.

Conclusion

1. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Herz et al. discloses a system and method for scheduling broadcast of and access to video programs and other data using customer profiles.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Van Handel whose telephone number is 571-272-5968.

The examiner can normally be reached on 8:00am-5:30pm Mon.-Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Kelley can be reached on 571-272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MVH


SCOTT E. BELIVEAU
PRIMARY PATENT EXAMINER